

ESTTA Tracking number: **ESTTA533813**Filing date: **04/23/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Leatrice N Carley		
Entity	Individual	Citizenship	UNITED STATES
Address	26320 Pin Oak Dr. Magnolia, TX 77354 UNITED STATES		

Attorney information	John F. Luman III Bracewell & Giuliani LLP 711 Louisiana St. Ste. 2300 Houston, TX 77002 UNITED STATES docketing@bgllp.com, matt.schneller@bgllp.com, john.luman@bgllp.com, david.morris@bgllp.com, stephanie.blair@bgllp.com Phone:731-221-1596
----------------------	--

Registration Subject to Cancellation

Registration No	4261122	Registration date	12/18/2012
Registrant	Pure Vitamins and Natural Supplements 1708 East North Bay street 1708 East North Bay street Tampa, FL 33610 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2008/01/07 First Use In Commerce: 2012/03/21
All goods and services in the class are cancelled, namely: Dietary and nutritional supplements

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT		
Goods/Services	Herbal supplements for Sexual Enhancement; Natural supplements for treating erectile dysfunction		

Attachments	Cancellation Petition CONTROL.pdf (5 pages)(16250 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matt Schneller/
Name	Matt Schneller
Date	04/23/2013

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NANETTE CARLEY d/b/a BIOCEUTICALS,
Petitioner,

vs.

PURE VITAMINS AND NATURAL
SUPPLEMENTS LLC, d/b/a NATURAL
VIGOR-25
Registrant

Cancellation No.: _____
PETITION FOR CANCELLATION
Registration No.: 4,261,122
Mark: CONTROL
International Class: 005
Filed: April 29, 2012
Registration date: December 18, 2012

PETITION FOR CANCELLATION

Nanette Carley d/b/a Bioceuticals (“Bioceuticals” or “Petitioner”) believes that it will be damaged by the continued registration of the mark CONTROL (“Pure Vitamins’ Mark”) as registered in Reg. No. 4,261,122 registered on December 18, 2012 (the “Pure Vitamins Registration”), filed by Pure Vitamins and Natural Supplements LLC, d/b/a Natural Vigor-25 (“Pure Vitamins”).

THE PARTIES

1. Bioceuticals has a place of business at 14090 FM 2920, Suite C, Tomball, Texas 77377.

2. Pure Vitamins is a Florida limited liability company with a place of business at 1020 E. Brandon Blvd., Suite 211, Brandon, Florida 33511. Pure Vitamins may be served via its registered agent Ken Issa at 5508 Terrace Court 1, Tampa, Florida 33617.

BIOCEUTICALS AND ITS COMMON LAW CONTROL MARK

3. Bioceuticals was established in 2001 and has long provided a variety of natural and/or herbal supplements, including without limitation natural and/or herbal supplements for sexual enhancement and/or treating erectile dysfunction.

4. Bioceuticals owns common-law trademark rights in the CONTROL word mark and the CONTROL ALL NATURAL SEXUAL ENHANCEMENT word mark, for herbal supplements for sexual enhancement, and Bioceuticals has used those marks in connection with such herbal supplements since at least as early as December 2007 and the marks remains in use for those goods.

PURE VITAMINS AND THE PURE VITAMINS REGISTRATION

5. Pure Vitamins filed a U.S. Trademark application for CONTROL for dietary and nutritional supplements in Class 005: on April 29, 2012 (“Pure Vitamins’ Filing Date”), which was assigned Serial No. 85/611,373.

6. Pure Vitamins U.S. Trademark application 85/611,373 for CONTROL was registered on December 18, 2012, and the Pure Vitamins’ U.S. Trademark Registration was assigned Registration No. 4,261,122.

7. The Pure Vitamins Registration claims first use on January 7, 2008 for the goods in Class 005 and claims first use in commerce on March 31, 2012.

8. Therefore, Pure Vitamins’ claimed first use date of January 7, 2008 is Pure Vitamins’ earliest claimed priority date (“Pure Vitamins’ Claimed First Use Date”).

BIOCEUTICALS HAS PRIORITY IN ITS COMMON-LAW CONTROL MARKS

9. Bioceuticals used its common law Marks CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT prior to Pure Vitamins’ Pure Vitamins’ Claimed First Use Date. Bioceuticals sold and shipped its natural and/or herbal supplements for sexual enhancement and/or treating erectile dysfunction in commerce in the United States to more than forty states prior to the December 2007. Bioceuticals sold and shipped its natural and/or herbal supplements for sexual enhancement and/or treating erectile dysfunction under its common law

CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks to more than thirty purchasers in Texas prior to December 2007.

10. On November 1, 2012, Bioceuticals filed trademark applications for CONTROL (serial number 85/769,427) and CONTROL ALL NATURAL SEXUAL ENHANCEMENT (serial number 85/768,951).

LIKELIHOOD OF CONFUSION

11. Pure Vitamins' Mark CONTROL word mark is identical to Bioceuticals' common law CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks.

12. Bioceuticals avers that Pure Vitamins' supplements and Bioceuticals' supplements are both provided to purchasers of dietary and/or herbal supplements, including without limitation purchasers of supplements targeted to sexual enhancement.

13. Bioceuticals further avers that Pure Vitamins' goods are related to those of Bioceuticals under its common law CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks.

14. Bioceuticals further avers that Pure Vitamins' goods are competitive since Pure Vitamins' supplements and Bioceuticals' supplements are both provided to purchasers of dietary and/or herbal supplements, including without limitation purchasers of supplements targeted to sexual enhancement.

15. Bioceuticals further avers that consumers are likely to believe that Pure Vitamins' goods are provided by, sponsored by, or affiliated with Bioceuticals.

16. Bioceuticals further avers that Pure Vitamins' Mark so resembles Bioceuticals' marks and Bioceuticals' goods as to be likely, when applied to Pure Vitamins' supplements, to

cause confusion, to cause mistake, and to deceive the public with consequent injury to Bioceuticals, the trade, and the public.

17. Bioceuticals has a pending applications for its marks CONTROL (serial number 85/769,427) and CONTROL ALL NATURAL SEXUAL ENHANCEMENT (serial number 85/768,951), which have been refused on the basis of likelihood of confusion with Pure Vitamins' Mark.

18. Bioceuticals further avers that it will be damaged if the Pure Vitamins' Registration is allowed to continue to be registered, because consumers and prospective consumers are likely to be confused, mistaken, or deceived into believing that Pure Vitamins or Pure Vitamins' goods are connected with, sponsored by, or approved by Bioceuticals. Any defect, object, or fault found with Pure Vitamins' goods marketed or sold under Pure Vitamins' Mark will reflect upon and seriously injure the valuable reputation that Bioceuticals has established for its CONTROL supplements and/or CONTROL ALL NATURAL SEXUAL ENHANCEMENT supplements. Continued registration of Pure Vitamins' Mark would also damage Bioceuticals because such registration improperly awards a statutory exclusive right to Pure Vitamins in violation and derogation of the prior and superior rights of Bioceuticals, and unduly narrows the scope of protection afforded to Bioceuticals under its common law rights, all in contravention of 15 U.S.C. § 1052(d).

19. Because there is a likelihood of confusion between Pure Vitamins' Mark and Bioceuticals' senior rights in Bioceuticals' common law marks, cancellation of the Pure Vitamins Registration is proper under 15 U.S.C. § 1064. Failure to cancel the Pure Vitamins Registration would be inconsistent with Bioceuticals' senior rights in the CONTROL and

CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks. Bioceuticals and the public are and will continued to be damaged by registration of the Pure Vitamin's Mark.

WHEREFORE, for any of all of the claims above, Bioceuticals respectfully prays that its petition for cancellation be sustained and that the Pure Vitamin's Registration be cancelled. This Petition for Cancellation is filed according to the rules governing electronic submissions to the Trademark Trial and Appeal Board, including payment of the requisite \$300 fee.

DATED: April 23, 2013.

<p>CERTIFICATE OF SERVICE</p> <p>I hereby certify that this PETITION FOR CANCELLATION is being deposited with the United States Postal Service with sufficient postage as first class mail on April 23, 2013 in an envelope addressed to the listed correspondent for the Pure Vitamin' Registration and to Registrant:</p> <p>Dr. Ken Issa 1708 East North Bay Street Tampa, Florida 33610</p> <p>and</p> <p>Dr. Ken Issa 5508 Terrace Court 1 Tampa, Florida 33617</p> <p>Signature: <u>/Matthew D. Schneller/</u></p>	<p>Respectfully submitted,</p> <p>BRACEWELL & GIULIANI LLP</p> <p>Signed: <u>/John F. Luman III/</u> John F. Luman III, David Morris, Erin S. Hennessy, Matthew D. Schneller Bracewell & Giuliani LLP 711 Louisiana Street, Ste. 2300 Houston, Texas 77002 713-221-1596</p>
---	--